General Osteopathic Council

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Osteopathic Practice Committee

Minutes of the 6th Osteopathic Practice Committee held on Thursday 12 March 2015

Confirmed

Chair: Jonathan Hearsey

Present: Jane Fox
Kenneth McLean
Manoj Mehta
Julie Stone
Alison White
Jenny White

In attendance: Marcia Scott (Council and Executive Support Officer)
David Gomez (Head of Regulation)
Fiona Browne (Head of Professional Standards)
Stacey Clift (Professional Standards Officer, Item 11)
Matthew Redford (Head of Registration and Resources)

Item 1: Welcome

1. The Chair welcomed all to the meeting.

Item 2: Apologies and Interests

2. Apologies were received from Tim Walker, Chief Executive and Registrar, who was unable to attend the meeting.

3. No members declared any potential conflicts of interest to the meeting.

Item 3: Minutes and matters arising

4. The minutes of the meeting held on 2 October 2014 were approved subject to the following amendments:

    a. The correct date and time for the next meeting should read: Thursday 12 March, 09.30.

5. There were no matters arising.

Item 4: Professional Conduct Committee (PCC) Practice Note: Acting in the Public Interest

6. The Head of Regulation introduced the item which proposed the introduction of a Practice Note to assist the decision making of the Professional Conduct and Health Committees.

7. The Head of Regulation added that the Practice Note was the latest in a suite of PCC guidance in line with existing case law. It was also highlighted that as the LeFroy Bill was likely to gain Royal Assent, the guidance had been worded to take into account the content of the Bill. He added that the draft Practice Note had been considered by members of the Professional Conduct Committee at their training day in November 2014, and by the GOsC FTP Users Forum.

8. The Committee discussed the following points:

    a. The Committee noted the views expressed by the GOsC FTP Users Forum and agreed that the draft Practice Note: Acting in the Public Interest, was a very useful addition to the current guidance documents.

    b. Although referred to in the body of the guidance it was suggested that, as the first consideration of a hearing was whether the decision should be heard in public or private, could this be listed as a public interest consideration.

    c. In relation to Paragraph 33, members suggested that the two other aspects of the public interest should play a lesser role in Health Committee decisions, rather than no role at all, and the wording should be amended accordingly.

    d. It was noted that the following correction should be made at the second sentence, paragraph 18 to read:

        'However, in some instances the PCC.'

Agreed: Subject to the suggested corrections and amendments, the Committee agreed that the Practice Note on Acting in the Public Interest should be recommended to Council for approval.

Item 5: Professional Conduct Committee (PCC) Practice Note: Admission of Good Character Evidence

9. The Head of Regulation introduced the item which proposed the introduction of a Practice Note to assist the decision making of the Professional Conduct Committee, setting out the types of evidence that are admissible where often these arise at different points of a hearing.

10. The Committee agreed that the draft Practice Note was a very useful addition to the current guidance documents.

11. The Committee noted the views provided by members of the GOsC Users Forum and the concerns expressed by one registrant representative in relation to paragraphs 21, 23 and 24 of the draft Guidance.

    Paragraph 24 of the draft guidance stated:

    By this time the issues will have been identified, and admissibility can usually be determined on the basis of a general description of the type of evidence contained in the statements and its relevance to the issues in the case (that is without the PCC reading the statements).

12. The Head of Regulation explained that there was a difference of legal opinion as to whether there was a need for the Panel to read the statements or if it could determine admissibility on the basis of a description of the evidence and relevance to the issues in the case.

13. The Committee agreed that, where there was a difference of legal opinion, the Executive is entitled to rely on the opinion of the Queen's Counsel that had been commissioned to prepare the draft Practice Note. However, Members recommended that the reference to the specific point at which submissions should be heard be removed as this was an issue for the discretion of the Panel.

14. Members also raised a concern about paragraph 20 which states:

    The registrant will be warned that if the attendance of the witness to give character evidence is required by the GOsC, and the witness fails to attend, the evidence might not be admitted, or the failure to attend might detract from the weight the PCC attaches to it.

    Members recommended that the paragraph be amended to incorporate a reference to the failure of a witness to appear 'without good reason'.

    Members also recommended the use of gender neutral language throughout the draft Practice Note.

Agreed: the Committee agreed that the Practice Note on Admission of Good Character Evidence should be recommended to Council for approval.

Item 6: Registrants with Blood Borne Conditions

15. The Head of Regulation introduced the item which asked the Committee to consider whether the GOsC should introduce new guidance to assist osteopaths with blood borne conditions such as HIV and hepatitis.

16. The Head of Regulation added that there was a need to be alive to the potential for discrimination and to the impact of any guidance issued by the Council in this area, upon an osteopath's practice. The GOsC would need to undertake an equality impact assessment before issuing any guidance; and any guidance would need to be proportionate to the potential risks identified.

17. It was noted that a number of registrants had requested advice in this area recently, highlighting the need for the Council to issue some sort of guidance.

18. The Committee noted the recent developments within the NHS context, and the practice of other bodies including the British Acupuncture Association.

19. The Committee made the following comments in discussion:

    a. It was pointed out there was no onus on osteopaths to be tested. It was understood from informal discussion that at some clinics students have no set guidance on precautions that should be taken. The potential for transmission of blood borne diseases from the patient to the practitioner was also highlighted.

    b. It was agreed that there was a need for guidance and that the GOsC should issue some guidance. This might possibly be supplemented by additional guidance from the Institute of Osteopathy (iO).

    c. However, it was agreed that any guidance must be relevant to, and workable within, the context and formal structures of the osteopathy profession, including the fact that many in the profession were sole practitioners.

    d. It was suggested that the guidance would be very helpful for those practitioners who might carry blood borne conditions as well as being useful for the osteopathic education institutions (OEIs) and to students before embarking on their careers.

    e. It was agreed that any language and terminology in the guidance should be simply expressed and jargon or potentially discriminatory language should be avoided.

    f. It was agreed the executive should undertake further discussion with relevant groups such as the Terence Higgins Trust and the Legal Assessors as well as the OEIs.

    g. Members also considered that the guidance should be based on a greater understanding of what osteopaths do in daily practice in terms of the risk relating to blood borne conditions (types of examination and procedures).

    h. It was noted that the *Osteopathic Practice Standards* covered areas of public health advising what practitioners should be doing in relation to public health but did not cover blood borne conditions. It was agreed that the guidance should be linked to the *Osteopathic Practice Standards*.

Agreed: the Committee agreed there should be further scoping activity to inform the development of draft guidance including discussion with other relevant groups and organisations and that the guidance be linked to the *Osteopathic Practice Standards* and PCC Guidance. The Committee agreed that following this scoping

work, draft guidance should be tabled for consideration by the Committee at a future meeting.

Item 7: Draft Guidance for the Professional Conduct Committee on Drafting Determinations.

20. The Head of Regulation introduced the item which proposed the introduction of new guidance for the Professional Conduct Committee on drafting determinations. He informed members that other regulators had guidance in this area and that the PCC had suggested guidance should also be drafted for the GOsC.

21. The Head of Regulation drew attention to a number of comments on the draft guidance received from PCC Chairs' and shown in the addendum for this item (Addendum to Item 7):

    a. Add. 7 – Paragraph 5:

       'In relation to paragraph 6, and the need to refer to legal advice, the chair's view is that "unless the issues have been particularly complex or unusual, it has normally been sufficient to state that the Committee accepted the advice of the legal assessor'.

       The Head of Regulation did not entirely agree with the formulation but did suggest that a middle way could be found. Members suggested that the comments may have been influenced by guidance relating to another regulator and were not appropriate for the GOsC.

    b. The OPC considered that the draft guidance was a welcome and timely addition to the suite of guidance documents produced by Council for its fitness to practise committees.

    c. Members of the OPC made a number of helpful drafting comments and suggestions. In particular, members considered that paragraph 6 of the draft guidance should remind the Professional Conduct Committee that its determination should explain the reason why a witness was or was not believed (in whole or in part).

    d. Members were firmly of the view that paragraph 6 of the draft guidance should also explicitly remind the Professional Conduct Committee to avoid attributing any motivation to a witness in the absence of explicit admissions by that witness as to his or her motivation for bringing a complaint, and to avoid drawing inferences in this regard.

    e. Members further considered that, rather than refer explicitly to the Spencer case in paragraph 7 of the draft guidance, it would be more appropriate for the guidance to refer to 'the relevant case law.'

f. In line with our usual practice, the intention is that the GOsC will hold a public consultation on the draft guidance and the analysis of that consultation considered by Council at a future meeting.

Agreed: the Committee agreed that, subject to amendments, the draft guidance on drafting determinations should be recommended to Council for consultation.

Item 8: Draft Bank of Conditions for Health Committee

22. The Head of Regulation introduced the item which proposed the introduction of a standard bank of conditions to assist the decision making of the Health Committee. He informed members that there had been an increase in the number of health cases and the Health Committee had identified the need for a bank of conditions to assist in the decision making process of the Committee.

23. The Head of Regulation added that the comments submitted by the PCC Panel Chairs shown in the addendum were focused mainly on how the information was presented.

24. The Committee made the follow points in discussion:

    a. Members agreed that the need for assistance was correct and the bank of conditions was also the correct approach.

    b. Members were inclined to a different layout. It was suggested that the list of conditions and wording should be considered and be broader based and less prescriptive.

    c. It was confirmed that as a standard condition osteopaths meet the costs associated with supervision by a Consultant/GP and the provision of medical reports.

    d. Members asked about the osteopaths getting three-monthly reports from health professionals. There were concerns that individuals with health issues would experience some difficulty in obtaining timely reports.

    e. The Head of Regulation explained that the conditions were not prescriptive and in having as wide a set of conditions as possible would allow all parties and the Health Committee to agree and approve what would be most appropriate for a particular case.

    f. It was thought an overt signposting of the key questions would be helpful in the introduction as they would be pivotal.

    g. A comment was made that it would be helpful to have headings and improve numbering.

    h. Members asked whether the Health Committee receives reports from relevant experts where dealing with psychiatric or psychological cases. The

Head of Regulation confirmed they are received. It was also suggested that when placing an individual under supervisory care it might be preferable to refer to a health practitioner, rather than a medical practitioner, though it was agreed this would depend on the condition.

i. It was suggested that some osteopaths might prefer an alternative health route but arrangements should include expert diagnosis.

j. The Head of Regulation noted the comments and suggestions for amendments from members which would be incorporated into the draft.

Noted: the Committee noted the draft standard bank of conditions.

Item 9: Concerns about transgression of professional and/or sexual boundaries with patients

25. The Head of Professional Standards introduced the item which reviewed the regulatory approach to patient safety issues highlighted by complaints about breaches of professional and/or sexual boundaries. She informed members of the concerns which had been raised by the Investigating Committee whose Chair had written to the Chair of the Education and Registration Committee to express his concerns regarding the rise in the number of such complaints. The Institute of Osteopathy (iO) also had expressed concerns.

26. The Head of Professional Standards said this matter required careful review and the following two questions were posed:

    a. *What further actions might the GOsC take – either themselves – or in partnership with others to protect patients? (Actions may include the production of guidance or revision of existing guidance, but also mechanisms for implementation of that guidance or other teaching mechanisms etc).*

    b. *How will the GOsC know whether any action that is taken has been effective in achieving the goal? (For example, is a decrease in fitness to practise cases a success or failure in this area?)*

27. The Committee made the following points in discussion:

    a. Members commented that any action after training was retrospective and suggested that teaching could be more sophisticated in its approach. There should be assistance in helping students recognise how risks impact on practice and the profession. It was also pointed out that many OEIs already encourage students to consider professional boundaries.

    b. Members commented that the issues were not well-embedded within osteopathy and the teaching in this area could be more osteopathy specific.

    c. During discussion a number of suggestions to address the issues were put forward including:

i. The suggestion that local/regional groups could provide a forum for highlighting the issues relating to the subject by using role play in small groups, for example.
ii. The suggestion that CPD providers needed to look at other ways of integrating new thinking.
iii. It was suggested that a small project could be conducted combining CPD and patient groups to consider how to influence thinking. The Head of Professional Standards expressed reluctance for this idea saying the issue was to encourage osteopaths to look to themselves at how to move forward.
iv. Regular reminders about responsibilities in understanding and maintaining professional boundaries.
v. Inclusion of professional boundaries as part of CPD.
vi. The suggestion to use educational videos showing both the osteopath and patient views.
vii. Would a project involving a small group of osteopaths who took part in the CPD project and their patients be a way forward?
viii. Could anything be included on the current complaints forms?

d. It was suggested that there should be an addition to the paper, cross-referencing with other guidance, which places item alongside maintenance and the risk of breaching boundaries.

e. It was agreed that part of the reason for the increase in cases was due to patient expectations, with screens, towels, and gowns being viewed as a given by patients. A more sensitive environment has elevated patient expectations. Members commented that perhaps GOsC need to conduct research into professional boundaries, exploring the differences in expectations and standards. It was thought that some osteopaths may not be aware that some of their practices may inadvertently breach professional boundaries.

f. It was suggested that the findings from the research conducted by Professor Zubin Austin for the HCPC might be helpful in addressing some of the issues and also that building emotional intelligence was required which would best be implemented at undergraduate level. It would also be important to include it at post-graduate level. It was countered that OEI's do put emphasis on professional boundaries.

g. The Head of Professional Standards suggested that the focus needed to be on those who were already in practice and a new starting point might be with the *Osteopathic Practice Standards* and equipping osteopaths with the right tools.

h. Members commented that a range of mechanisms were required which go to the heart of behaviour. At present these are not available and more sophistication is needed to address the issue.

i. It was suggested that the 'patient experience' be included in a training package which would open the eyes of practitioners. It was agreed that the sole practitioner was the focus of the issue but the problem also existed within group practice. Do osteopaths perceive how they are viewed by patients? It was thought that a lot of the issues came out of misunderstandings between practitioners and patients.

j. Members asked if there were comparable rates of complaints in similar professions. The Head of Regulation responded that the nature of osteopathy made it unlike other regulated health practices. The Head of Professional Standards added that there had been no in-depth discussion within inter-regulatory group meetings but the issue would be raised when attending the next meeting.

k. In what the GOsC was trying to achieve there needed to be three degrees of aspiration for which the paper was an important step:

    i. What needs to be done to stop breaches and maintain boundaries
    ii. Understanding culture and landscape
    iii. Establishing a framework and sensitising osteopaths to boundaries.

l. It was agreed that professional boundaries might be a compulsory component of CPD but the challenge was how to engage with registrants.

m. The Committee agreed that it was clear that finding the correct approach was difficult as the issue was not completely understood. Linear communications were not the way to engage, and the current approach needed to be reviewed.

n. In summary the Committee welcomed the discussion and agreed that there would need to be further discussion to meet the challenges and improve understanding of the issues relating to maintaining professional boundaries.

Noted: The Committee noted the approach to the patient safety issue highlighted by complaints about breaches of professional and/or sexual boundaries.

Item 10: Review of the Osteopathic Practice Standards

28. The Head of Professional Standards introduced the item on the review of the *Osteopathic Practice Standards* and the next steps in developing the policy.

29. It was added that the scoping exercise was ongoing and a detailed scope would come towards the end of 2016 as the GOsC would be looking more broadly at some of the areas touched on in earlier discussion as well as other areas including professional judgment.

30. The Committee made the following points in discussion:

a. Members commented that there were a number of common issues in line with Item 9 – Concerns about transgression and what it meant to be a modern healthcare professional. It was commented that the standards were not only about deficits and showed that the GOsC is doing its part and meeting its role. Members were pleased with the work being done through the Values Seminars and suggested that this was a journey that might require the GOsC to be less linear.

b. Members were not entirely persuaded that it was a good use of investment to review the standards in its structure and content and that views from the previous discussion, looking at practitioner/patient relationships and continuing professional development, should be the focus. Members were aware of the increase of transgressions in a number of areas and therefore keen to get a more in-depth understanding as to the causes and solutions.

c. It was argued that standards could not be disassociated from behaviors and the two areas worked together, improved standards led to improved behaviors. It was agreed that it was not the standards that needed to be corrected but the perceptions of what they contained, and if behaviors were to be positively influenced then the standards had to be presented as relevant to all of the profession.

d. It was suggested that there should be more investment in guidance in areas such as professionalism and what professionalism means.

e. It was commented that the OPS had come full circle and now it was time to understand where it was contentious. It was not about redrafting but closing gaps between rules etc. should be the goal.

f. It was commented that it would be incorrect if tasks were being undertaken due to the expectations of the Professional Standards Authority (PSA). The GOsC should be able, as a small regulator with limited resources, to do what is required for its registrants. There would be further discussion in the future to assess risk and benefits of change at a meeting of Council.

g. It was agreed that groundwork needed to be set prior to conversation on the standards and before engaging with the wider community.

Noted: the Committee noted the proposals for the review of the *Osteopathic Practice Standards*.

Item 11: Scoping of the State of Continuing Professional Development (CPD) Evaluation Report

31. The Professional Standards Officer introduced the item which concerned scoping the state of continuing professional development report, to ascertain the current scheme and look at a way forward by asking 11 possible questions through a three stage process.

32. The Committee made the following points in discussion:

    a. Members asked for confirmation that research was not being repeated where data was already available. The Professional Standards Officer assured members that the project was not going over old ground and that it was the intention to demonstrate an explicit baseline on current CPD patterns. The Head of Professional Standards added that the baseline is not comprehensive and the work of the Professional Standards Officer would address this.

    b. Members agreed the proposal was a good idea and suggested it would be useful to include graduating students as part of the exercise. It was also suggested that it would be useful to include the year that registrants graduated in the sampling frame. Members also commented that it was thought it would have been helpful for CPD to have formed part of the McGivern research as it was felt it had been a missed opportunity. It was suggested as an additional measure that there should be cross-checking between CPD audits and what osteopaths are saying to see if there is a differential in perceptions.

    c. Members asked how the information would be fed back to participants to show how the research was being used. It was also requested that a geographical dimension be included in the sample so that any gaps in CPD provision could be addressed. It was also asked where the KPMG research might 'dovetail' with the research which was being proposed.

    d. Members commented on the content of the research questions suggesting that they required a higher degree of sophistication as there were concerns they appeared pejorative. It was pointed out that there needed to be a greater degree of understanding of CPD and that there were a number of options to meet the requirements beyond attending a course. It was also pointed out that these were scoping study research questions and not the questions which would be directly put to registrants. It was also asked if there was a way of measuring the impact of CPD perhaps through a focus group rather than a questionnaire.

    e. Members suggested that it may be worthwhile piloting the questions through focus groups and also faculty members of the OEIs.

Agree: The Committee agreed the scope of the state of CPD Report and the next steps.

Item 12: Any other business

33. Zubin Austin and HCPC Report: Members commented that there was much to be taken from the report for reflection as much of its content was relevant to the GOsC. The Head of Professional Standards agreed, but advised the report's questions were only directed at those who were employed.

34. The research conducted by the General Dental Council was also cited. The date for publication was not clear but it was agreed that sharing of the findings would be useful.

35. Members commended the papers which had been presented for some very useful discussion and thanked the staff for their hard work.

36. The Chair noted that this was the last Committee to be attended by the Head of Regulation before his departure, and thanked David Gomez for his support to the Committee.

Date of the next meeting: Thursday 18 June 2015 at 14.00